

COMBINED DECLARATION AND POWER OF ATTORNEY
FOR CONTINUATION-IN-PART APPLICATION

AS A BELOW-NAMED INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: IMPROVED EXPRESSION USING FUSED GENES PROVIDING FOR PROTEIN PRODUCT, the specification of which

(check one) is attached hereto
 was filed on July 6, 1993

as application serial no. 08/088,564

I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

"(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability."

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said application. This invention was not in public use or on sale in the United States of America more than one year prior to this application. This invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on any application filed by me or my legal representatives or assigns more than six months prior to this application.

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below, and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) and (b) set forth above which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application Serial No.: 07/680,046

Filing Date: 29 March 1991

Status: pending

Application Serial No.: 07/169,833

Filing Date: 17 March 1988

Status: pending

Application Serial No.: 717,209

Filing Date: 28 March 1985

Status: abandoned

As to the subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said earlier application, or in public use or on sale in the United States of America more than one year prior to said earlier application; that said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of said earlier application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said earlier application; and that the earliest application(s) for patent or inventor's certificate on said invention filed by me or my legal representatives or assigns in any country foreign to the United States of America is identified below, as well as all other such applications (if any) filed more than twelve months prior to the filing date of this application:

*

The priority of the earliest application(s) (if any) filed within a year prior to said pending prior application is hereby claimed under 35 U.S.C. § 119.

As to the subject matter of this application which is not common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States of America more than one year prior to the date of this application, and that said subject matter has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application, and that the earliest application(s) for patent or inventor's certificate on said subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America is identified below, as well as all other such application(s) (if any) filed more than twelve months prior to the filing date of this application:

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Dianne E. Reed, Reg. No. 31,292

Roberta L. Robins, Reg. No. 33,208

Kenneth Barovsky, Reg. No. P-36,442

Grant D. Green, Reg. No. 31,259

Address all correspondence to: Roberta L. Robins

REED & ROBINS
635 Bryant Street
Palo Alto, CA 94301

Address all telephone calls to: Roberta L. Robins at (415) 617-8999.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or, both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature: Lawrence S. Cousens

Date 11/11/93

Full Name of Inventor: Lawrence S. Cousens

Citizenship: United States of America

Residence: ~~Wolinville, Washington~~ Oakland, CA

Post Office Address: ~~14037 N.E. 181st St. #35, Wolinville, WA 98072~~

4316 Everett Ave, Oakland, CA 94602

Signature: Patricia A. Tekamp-Olson

Date 12/22/93

Full Name of Inventor: Patricia A. Tekamp-Olson

Citizenship: United States of America

Residence: San Anselmo, California

Post Office Address: 80 Camino de Herrera, San Anselmo, CA 94526

Signature: _____

Date _____

Full Name of Inventor: Jeffrey R. Shuster

Citizenship: United States of America

Residence: Davis, California

Post Office Address: 2619 Regatta Lane, Davis 95616

Signature: James P. Merryweather

Date 11/18/93

Full Name of Inventor: James P. Merryweather

Citizenship: United States of America

Residence: Berkeley, California

Post Office Address: 310 The Spiral, Berkeley, CA 94708

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as application serial no. 08/088,566

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Signature: _____ Date _____

Full Name of Inventor: Lawrence S. Cousens

Citizenship: United States of America

Residence: Wollinville, Washington

Post Office Address: 14037 N.E. 181st St. #35, Wollinville, WA 98072

Signature: _____ Date _____

Full Name of Inventor: Patricia A. Tekamp-Olson

Citizenship: United States of America

Residence: San Anselmo, California

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Signature: Jeffrey R. Shuster Date 7/16/93

Full Name of Inventor: Jeffrey R. Shuster

Citizenship: United States of America

Residence: Davis, California

Post Office Address: 2619 Regatta Lane, Davis 95616

Signature: _____

Date _____

Full Name of Inventor: James P. Merryweather

Citizenship: United States of America

Residence: Berkeley, California

Post Office Address: 310 The Spiral, Berkeley, CA 94708